



{In Archive} Fw: Pretty Prairie

Stacie Tucker to: Mary Mindrup

Cc: Monica Wurtz, Diane Huffman

This message is digitally signed.

05/23/2008 08:47 PM

Archive:

This message is being viewed in an archive.

Here is the chronology, and the supporting documentation (if you need it):



Pretty Prairie Chronology 5.21.08.doc



EPA Amended ACO Pretty Prairie June 1994.pdf



Pretty Prairie Proposed CO from KDHE Aug 1996.pdf Pretty Prairie 1996 Consent Order 96_E_0263.pdf



Pretty Prairie 2007 Directive.pdf Pretty Prairie Nitrate Feasibility Study 2007.pdf



Pretty Prairie - EPA's No Bottled Water Ltr 2-4-08.pdf Pretty Prairie -Req mtg w EPA Ltr 4-16-08.pdf

*This 97-page
Document has
already been
copied for
FOIA.*

Sincerely,
Stacie

Stacie Tucker
U.S. EPA, Region 7
WWPD / WENF
Office 913.551.7715
Fax 913.551.9715
Tucker.Stacie@epa.gov

*Help EPA fight pollution by reporting potential environmental violations on EPA's website at:
<http://www.epa.gov/compliance/complaints/index.html>

----- Forwarded by Stacie Tucker/R7/USEPA/US on 05/23/2008 08:42 PM -----



Diane
Huffman/R7/USEPA/US
05/23/2008 02:50 PM

To "Stacie Tucker" <Tucker.Stacie@epamail.epa.gov>
cc

Subject Pretty Prairie

Get the chronology to Mary - she is handling this for while i am out. Thanks.

History of Pretty Prairie Public Water Supply **Pretty Prairie, Kansas**

Background Information:

Population: 600

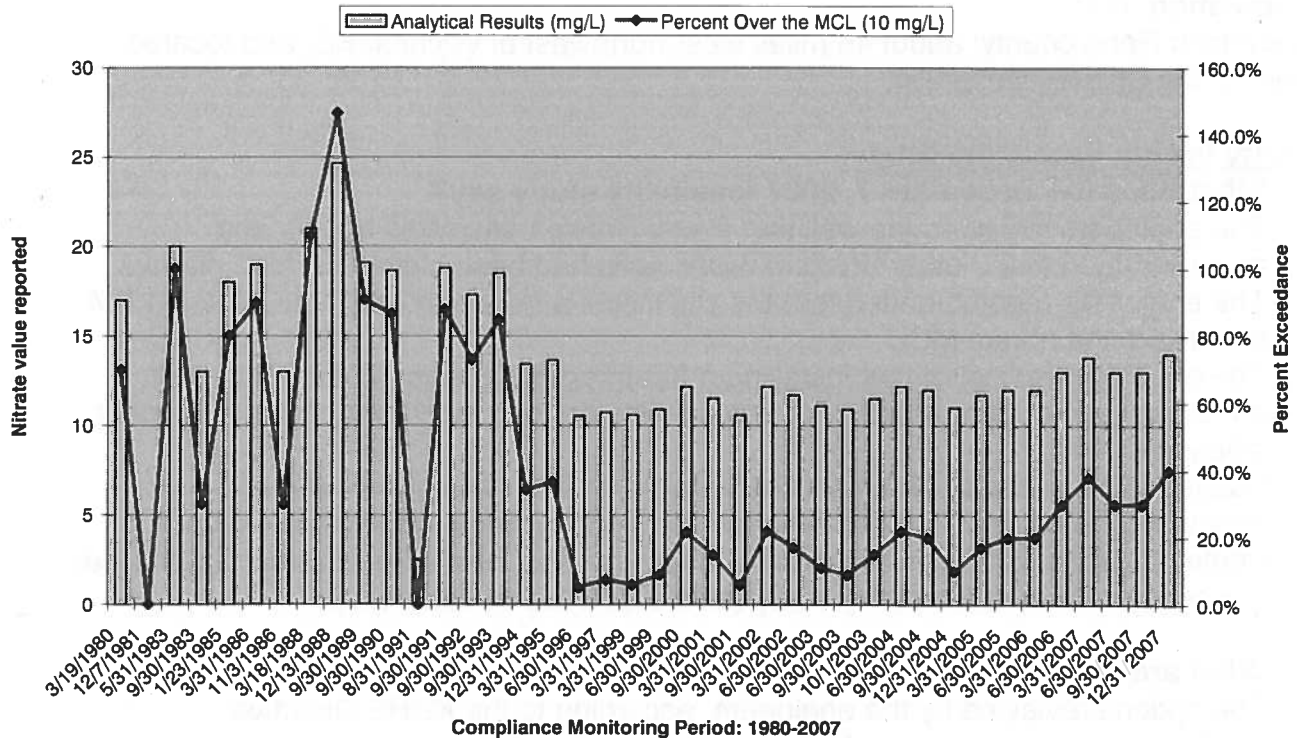
Location: Reno county; about 46 miles west-northwest of Wichita, KS; and located west of the Cheney Reservoir.

Pretty Prairie Feasibility Study:

- **What does the December 7, 2007 feasibility study say?**
- The engineers reviewed the well that Pretty Prairie uses (Well No. 5), and acknowledged that 2 other drinking water wells had been closed for high nitrates.
- The engineers recommended that the city install a treatment plant the costs \$1.2M to achieve the nitrate MCL.
- The engineers indicated that installing a treatment plant was not the most cost effective, but would provide Pretty Prairie with the best long-term nitrate treatment solutions.
- Based on the advantages and disadvantages of each treatment alternative reviewed, the engineers recommended that Pretty Prairie construct a central treatment plant and utilize the ion exchange process for nitrate treatment, discussed in Section 4.5 of the feasibility study (also presented in Table 6.1).
- **What are the options?**
- The options reviewed by the engineers, according to the KDHE Directive:
 - Obtaining a new source of raw water
 - Purchase water of acceptable quality from another PWS
 - Treatment options to reduce nitrate, including the feasibility of blending existing sources of water
- **What does the city need to move forward?**
- Pretty Prairie needs to coordinate a course of action with KDHE to meet the nitrate MCL.
- **What is KDHE doing?**
- Monitoring Pretty Prairie violations, and encouraging Pretty Prairie to take action based on the KDHE Directive issued in July 2007
- As of April 30, 2008, KDHE has not placed Pretty Prairie under any kind of schedule
- As of April 30, 2008, KDHE did not indicate when it would provide a compliance schedule with milestone date for Pretty Prairie to implement the feasibility study findings, such as bid contracts, award contracts, or commence construction of the recommended treatment system.

Chronology of Actions and Violations:

Summary of Nitrate MCL Violations in Pretty Prairie Public Water System Pretty Prairie, KS



- **1979 - 1993** – SDWIS data indicates nitrate levels varying between 13 – 25 mg/L.
- **1994** – Pretty Prairie constructed new well. Brief return to compliance with nitrate MCL.
- **1996 - 2008** – SDWIS data indicates that Pretty Prairie continued to have nitrate MCL exceedances. Levels range from 11 to 14 mg/L.

February 1989 - KDHE issued Administrative Order 89-E-10 on 2/13/1989 with a compliance schedule including actions to be taken to meet nitrate MCL.

- Pretty Prairie did not appeal this KDHE Order, so the Order became final.

October 1990 – KDHE issued Administrative Order 90-E-71 on 10/28/1990 for failure to comply with AO 89-E-10 & pay \$12,675 in penalties.

- Pretty Prairie appealed this KDHE Order before it became final.
- KDHE AO 89-E-10 was incorporated by reference.
- This Order did not become effective, so KDHE and Pretty Prairie entered into enforcement negotiations.

October 1991 – KDHE and Pretty Prairie entered into Consent Order 91-E-71 on 10/24/1991 for violations.

- Pretty Prairie agreed to comply with nitrate MCL by following compliance schedule & paying \$675 in civil penalties.

- KDHE dismissed the remaining penalty on the condition that Pretty Prairie had to comply with a compliance schedule to RTC with the nitrate MCL.

January 1994 – EPA issued an Administrative Compliance Order to Pretty Prairie on January 3, 1994 for violations of the nitrate MCL.

- ACO required Pretty Prairie to take certain scheduled steps to bring its PWS into compliance with the nitrate MCL of 10 mg/L.
 - Advertising for construction bids of necessary improvements to the system,
 - Awarding a contract for construction of improvements, and
 - Completing construction for necessary improvements to the PWS.
- Pretty Prairie only completed the requirement to advertise for construction bids.

February 1994 – Pretty Prairie filed a Petition for Review by the Court on February 17, 1994, because EPA and KDHE denied Pretty Prairie's request for an exemption from the nitrate MCL.

February 1994 – Pretty Prairie filed a Petition for Review by a different Court on February 17, 1994, challenging the issuance of EPA's ACO.

March 1994 – Pretty Prairie and EPA held conference calls about Pretty Prairie's strategy to RTC with the nitrate MCL.

- At the end of March 1994, Pretty Prairie provided EPA additional details of its proposal to develop a new source well with concentrations below nitrate MCL. EPA
- EPA agreed to amend the ACO to extend the deadline for awarding the construction contract until April 11, 1994.

April 1994 – EPA and Pretty Prairie met and agreed to take a number of actions from April to June 1994.

- EPA agreed to extend the deadline for Pretty Prairie to award the construction contract for PWS improvements until June 10, 1994.
- Pretty Prairie agreed to provide EPA with additional information about the cost of building a new treatment facility for the PWS
- Pretty Prairie stated its intention to drill a new test well
- Pretty Prairie agreed to analyze the quality of the water and report its findings to EPA by May 25, 1994.
- Meeting scheduled for June 1, 1994 to discuss Pretty Prairie's options for complying with the SDWA.
- EPA began to amend the January 1994 ACO, based on these commitments.

June 1, 1994 – EPA and Pretty Prairie held a conference call.

- Pretty Prairie submitted information about its plan to drill a new well.
- EPA advised Pretty Prairie that the likelihood of drilling a new water supply well which could produce water under the nitrate MCL for reasonable period of time appeared low.
- Pretty Prairie identified three possible routes for bringing its PWS back into compliance with the nitrate MCL.

- 1. Drill a new water supply well which can produce water with a nitrate level at or below the 10 mg/L MCL.
- 2. Install an ion exchange water treatment system, based on sodium chloride technology. This approach presented a waste disposal problem of the sodium chloride, but Pretty Prairie had identified a disposal well that can accept the wastes in accordance with the SDWA.
- 3. Install an ion exchange water treatment system based on potassium chloride technology. Relatively new treatment technology, the approach had an advantage because the waste solids could be disposed of in the sewers.
- Pretty Prairie preferred to drill a new well, and had concluded a series of activities to enable the city to determine the viability of that approach.
- Pretty Prairie expected to have sufficient data by August 8, 1994 to commit to implementation of 1 of the 3 approaches discussed above.

June 1994 – EPA issued an Amended Administrative Compliance Order on Consent Docket VII-93-PWS-04 on June 27, 1994 that required Pretty Prairie to achieve compliance with the nitrate MCL.

- Pretty Prairie Mayor had to notify EPA by August 8, 1994 what approach the city would take to RTC with the nitrate MCL.
- Pretty Prairie had to achieve compliance with the nitrate MCL by the following dates using the following treatment technologies:
 - November 1, 1994 – if Pretty Prairie drilled a new city water supply well
 - March 1, 1995 – if Pretty Prairie installed a conventional sodium chloride ion exchange water treatment system
 - March 1, 1995 – if Pretty Prairie installed a continuous ion exchange system (potassium chloride) water treatment system
- Pretty Prairie had to continually implement bottled water and public notification programs UNLESS
 - Certified to EPA that sampling November 1994 – January 1995 showed that the nitrate level was consistently below nitrate MCL, OR
 - Certified to EPA that the selected ion exchange treatment system was in operation, and sampling confirmed that the nitrate level was consistently below nitrate MCL

November 1994 - June 1995 – Pretty Prairie chose to drill a new well to comply with the nitrate MCL.

- Well No. 5 was constructed and placed into operation for the Pretty Prairie system.
- Pretty Prairie removed Wells No. 3 and 4 from service, and relied entirely on Well No. 5.

June 1995 – Pretty Prairie's new well achieved compliance with the terms of the EPA Amended ACO.

- Pretty Prairie achieved compliance with the nitrate MCL for a short time.

Early to mid-1996 – EPA closed the Consent Order, once Pretty Prairie demonstrated compliance with the nitrate MCL for a three month period.

- After the Consent Order was closed, Pretty Prairie's new well (Well No. 5) did not maintain compliance with the nitrate MCL, as EPA had suspected and advised in June 1994.

August 1996 – KDHE issued Consent Order 96-E-0263 to Pretty Prairie.

- Pretty Prairie expressed interest in proceeding with a wellhead protection plan
- Pretty Prairie did not appeal this KDHE Order, so the Order became final.

August 1996 – A KDHE letter to Pretty Prairie indicated that EPA agreed to close its ACO with Pretty Prairie after the KDHE Consent Order is executed.

October 15, 1996 - KDHE Consent Order 96-E-0263 for Pretty Prairie became effective and required the following steps towards compliance:

- The Consent Order commits the city to participate in the Kansas Wellhead Protection Program, and
- The Consent Order contains elements of the Kansas Nitrate Compliance Strategy.
- The Order was designed to expire in 7 years, per the then-draft Kansas Nitrate Strategy

March 1997- KDHE/EPA execute the Kansas Nitrate Strategy

- Intent was to establish a response procedure to address PWSs with recurring nitrate MCL violations in Kansas.
- Implemented through Admin. Orders to expire 7 years from issuance.
- Options to achieve compliance with the nitrate MCL of 10 mg/L included:
 - Blending
 - New Source
 - Purchase from another PWS
 - Ion exchange
 - Reverse osmosis

April 2005 – EPA R7 reviewed PWS files at KDHE for FY03 Annual Program Evaluation (APE) during April 20-21, 2005.

- Pretty Prairie files indicated that the PWS was out of compliance with the 24 hour public notification requirement in 40 CFR 141.202

February 2007 – KDHE issued a letter to EPA about Nitrate Strategy.

- KDHE still had Orders in place, and will honor Orders until they expire.
- KDHE identified strategy to resolved systems out of compliance with nitrate MCL
- KDHE agreed to commit to review 2005 and 2006 nitrate results from 6 systems (including Pretty Prairie) for nitrate violations occurring in 2 out of any 3 consecutive quarters.
- KDHE agreed to issue a directive to require systems in violation with nitrate MCL to hire a consulting engineer to prepare an engineering report and cost estimates to RTC with nitrate MCL.
- KDHE agreed to review the engineers' cost estimates with each water system and negotiate a schedule to complete the best option.

July 20, 2007 – KDHE issued a Directive to Pretty Prairie. The Directive outlined the following requirements:

- Sample water for nitrate once every 3 months (quarterly)
- If the test results indicate nitrate MCL exceedance at the point of entry, then Pretty Prairie had to do the following:
 - Issue public notice to all customers within 24 hours
 - Provide an alternate source of drinking water free of charge to infants, nursing mothers, and pregnant women
 - If Pretty Prairie chose to use bottled water to meet this requirement, then Pretty Prairie had to obtain certification from the bottled water supplier that the bottled water meets the appropriate US FDA requirements [there are no time restrictions for this choice, contradicting the SDWA]
- Pretty Prairie had to obtain the services of an engineer to prepare a formal feasibility study, including cost estimates to comply with the nitrate MCL
- Pretty Prairie had to submit the Feasibility Study to KDHE by December 20, 2007
- Pretty Prairie and KDHE were to jointly review the results of the study and determine a course of action.
- At a minimum, the feasibility study had to address the following options:
 - Obtaining a new source of raw water
 - Purchase water of acceptable quality from another PWS
 - Treatment options to reduce nitrate, including the feasibility of blending existing sources of water
 - If new source water can be obtained, minimizing the use of, or removing from service, the individual water well causing the violations

December 7, 2007 – KDHE received the feasibility study results from Pretty Prairie

December 2007 – Pretty Prairie met with KDHE to discuss the feasibility study findings and recommendations.

- KDHE and Pretty Prairie discussed that feasibility study identified treatment options to comply with the nitrate MCL.
- The feasibility study indicated that a \$1.2M treatment plant was the least expensive and most feasible option for compliance with the nitrate MCL.

January - February 2008 – Pretty Prairie was in the Unaddressed SNC List for 1QtrFY08 (Oct.-Dec. 2007), which is generated from SDWIS.

- KDHE indicated in its response to EPA that Pretty Prairie's feasibility study identified the \$1.2M treatment plant as the most feasible option for compliance with the nitrate MCL.

January 11, 2008 – Pretty Prairie article in local newspaper

- Pretty Prairie spent \$7,500 for a nitrate feasibility study

- 2007 feasibility study provided options starting at \$1.2M
- Pretty Prairie Council discussed the nitrate issue and the feasibility study findings at their regular council meeting on Monday, January 7th.
- Pretty Prairie requested justification from KDHE and EPA for the change in the nitrate policy of allowing bottled water after the feasibility study confirmed that a study completed in the mid-1990s indicated that solving the problem with a convention approach would cost the city
- The recommended solution for the study conducted in the mid-1990s was for the city to install a costly ion exchange treatment system. The city would have needed to containerize, and to obtain a solid waste permit from KDHE to get rid of the sodium chloride generated by the ion exchange treatment.
- The city chose not to follow this option in the mid-1990s, partly because KDHE couldn't write a solid waste permit for this situation in advance.

February 4, 2008 – EPA sent a letter to Pretty Prairie clarifying that Pretty Prairie could not use bottled water indefinitely.

- EPA's letter clearly stated that according to the SDWA, bottled water was only for use on a temporary basis, and not as a means of treatment to comply with the nitrate MCL.

February 22, 2008 – Pretty Prairie article in local newspaper

- Mayor was concerned that EPA's February 2008 letter didn't provide a clear explanation of steps to take, since Pretty Prairie could no longer use bottled water as a substitution for treatment.
- Estimated cost of installing a water treatment system will be \$1.2M.
- Pretty Prairie town residents may have their water rates boosted by at \$16 per month to afford treatment.

April 16, 2008 – Pretty Prairie sent EPA a letter inviting the Agency to meet and discuss nitrate issues.

- It appears that Pretty Prairie wants to discuss its practice of using bottled water, and why the Kansas Nitrate Strategy is no longer in effect.
- Pretty Prairie has met with EPA in the past to discuss nitrate MCL violations, and was able to discuss extensions for compliance schedules

May 16, 2008 – EPA drafted a letter to send to Pretty Prairie, encouraging Pretty Prairie to cooperate with KDHE and to implement the findings of the feasibility study as the means to achieve compliance with the nitrate MCL.

May 19, 2008 – Pretty Prairie's current status with KDHE:

- Pretty Prairie is not currently in the 2QtrFY08 (Jan.-March 2008) Unaddressed SNC List

FYI:

March 3, 2008 – USGS report for *Vulnerability of Recently Recharged Ground Water in the High Plains Aquifer to Nitrate Contamination*:

- Relative background concentration discussed, starting on page 22
- Parts of Reno County, including Pretty Prairie and the Cheney Reservoir, are identified in several maps indicating contamination occurring in non-irrigated agricultural land originating from non-point sources
- Hydrologists' model maps indicate that Pretty Prairie has a 41-80% probability of background nitrate concentrations greater than 4 mg/L for a regional water table depth of 0-30.5 meters

Physical / geological: Reno County has the following characteristics, which surrounds Pretty Prairie, and may influence some of PWS wells:

- Arkansas River Lowlands to the north and west – sand and gravel deposits, irregular hills, and sand dunes
- Wellington and McPherson Lowlands to the southwest and northeast – permeable sand and gravel, and a large quantity of high-quality water in the Equus beds nearby
- Osage Questas underlying Pretty Prairie – hill-plain or broad-terraces, steep eastern slopes, with plentiful limestone supply

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
726 MINNESOTA AVENUE
KANSAS CITY, KANSAS 66101

Copy

IN THE MATTER OF)

City of Pretty Prairie)
City Hall)
Pretty Prairie, Kansas 67570-0068)

PWS ID No. KS2015501)

Proceedings under Section 1414(g))
of the Safe Drinking Water Act,)
42 U.S.C. Section 300g-3)

Docket No. VII-93-PWS-04

AMENDED ADMINISTRATIVE
COMPLIANCE ORDER ON
CONSENT

On January 3, 1994, the Acting Regional Administrator, U.S. Environmental Protection Agency, Region VII, ("EPA") issued an Administrative Compliance Order pursuant to Section 1414(g) of the Safe Drinking Water Act, 42 U.S.C. Section 300g-3(g), to the City of Pretty Prairie, Kansas ("Pretty Prairie"). The Order directed Pretty Prairie to take certain scheduled steps to bring its public water supply into compliance with the maximum contaminant level ("MCL") for nitrates, 10 milligrams per liter (mg/l), established by EPA regulation. 40 C.F.R. §§ 141.11 and 141.62. The steps included advertising for bids for the construction of necessary improvements to the system, awarding a contract for construction of the improvements, and completing construction. Pretty Prairie completed the requirement to advertise for construction bids. The Order required Pretty Prairie to award the construction contract on or before April 5, 1994.

On February 17, 1994, Pretty Prairie filed a Petition for Review in the United States District Court for the District of Kansas of EPA's decision to deny Pretty Prairie's request for an exemption from the nitrate MCL; and on the same date Pretty Prairie filed a Petition for Review in the United States Court of

Appeals for the Tenth Circuit challenging the issuance of the Administrative Compliance Order. Those petitions are pending.

On March 23, 1994, Pretty Prairie advised EPA that it wished to pursue a strategy other than construction of the treatment facilities for which it had obtained bids. That alternative involved developing a new source well with concentrations below the MCL for nitrates.

Following a conference call on March 28, 1994, Pretty Prairie provided additional details on its proposal. On March 30, 1993, to allow time for a detailed evaluation of that proposal, EPA amended its January 3, 1994 Administrative Compliance Order, extending the deadline for awarding the construction contract until April 11, 1994.

On April 4, 1994, EPA and Pretty Prairie met and agreed to take a number of actions in the ensuing two months. EPA agreed, inter alia, to further extend Pretty Prairie's deadline for awarding a contract for the construction of the public water system improvements until June 10, 1994. Pretty Prairie agreed, inter alia, to provide EPA with additional information about the cost of building a new treatment facility. Pretty Prairie stated its intention to drill a new test well, and agreed to analyze the quality of the water and report its findings to EPA by May 25, 1994. The parties scheduled a further meeting on June 1, 1994, to discuss Pretty Prairie's options for complying with the requirements of the Safe Drinking Water Act. In view of these commitments, by amendment dated April 7, 1993, the deadline specified in the Administrative Compliance Order for awarding the construction contract was further extended until June 10, 1994.

Pretty Prairie submitted information pursuant to the above extension agreement, and the parties convened a telephone conference on June 1, 1994 to discuss its significance. EPA advised Pretty Prairie that the likelihood of drilling a new water supply well which could produce water under the nitrate MCL for a reasonable period of time appeared low. Subsequent to that meeting, discussions were held concerning the possibility of agreeing on the terms of a final Amended Administrative Compliance Order, to be issued on consent of the parties, which would resolve the various disputes between them.

Pretty Prairie has identified three possible routes for bringing its system into compliance with the nitrate MCL. One is to drill a new water supply well which can produce water with a nitrate level at or below the 10 mg/l MCL. The second is to install an ion exchange water treatment system based on a sodium chloride technology. This approach presents the problem of disposing of sodium chloride wastes, but Pretty Prairie has identified a disposal well which can accept the wastes in accordance with the requirements of the Safe Drinking Water Act. The third approach is to install an ion exchange water treatment system based on potassium chloride technology. While a relatively new water treatment technology, such an approach has the advantage in this case that wastes from the treatment operation can be disposed of in Pretty Prairie's sewers.

Pretty Prairie would prefer to drill a new well if doing so can be a long term solution to its nitrate problem. Pretty Prairie is concluding a series of activities which it believes will enable it to determine the viability of that approach. It is

understood by the parties that Pretty Prairie will have sufficient information by August 8, 1994, to commit to implementation of one of the three possible approaches discussed above.

Because the parties determined that an agreement was within reach to resolve their differences, EPA amended the Administrative Compliance Order again on June 10, 1994, further extending until June 24, 1993 the time for entering the contract for the construction of the public water system improvements. The extension was to allow time for this Amended Administrative Compliance Order on Consent to be prepared, agreed upon, and entered. On June 15, 1994, counsel for Pretty Prairie confirmed in writing his client's agreement in principle to resolve the pending disputes with an Administrative Compliance Order issued on consent.

EPA and the Pretty Prairie agree that this Amended Administrative Compliance Order on Consent should be issued, further amending the Administrative Compliance Order issued on January 3, 1994. Pretty Prairie agrees that, upon issuance of this Amended Administrative Compliance Order on Consent, the pending lawsuits in the United States District Court for the District of Kansas and in the United States Court of Appeals for the Tenth Circuit will be rendered moot.

It is understood by the parties that forbearance in the enforcement of the MCL for nitrate will not occur, except for such period in Paragraph 2, below, as may be applicable.

Therefore, IT IS HEREBY ORDERED THAT:

1. On or before August 8, 1994, the Mayor of the City of Pretty Prairie shall notify EPA by mail or facsimile that it

has entered into all necessary contracts to: (1) drill a new city water supply well and connect it, with any required disinfection, to its public water system; (2) install a conventional ion exchange water treatment system based on sodium chloride technology to treat its water supply; or (3) install a "continuous ion exchange system" capable of using either sodium chloride or potassium chloride to treat its water supply.

2. Pretty Prairie shall achieve compliance with the MCL for nitrates no later than the following dates:

a. November 1, 1994, if Pretty Prairie chooses to drill a new city water supply well in accordance with Paragraph 1(1), above;

b. March 1, 1995, if Pretty Prairie chooses to install a conventional sodium chloride ion exchange water treatment system in accordance with Paragraph 1(2), above; and

c. March 1, 1995, if Pretty Prairie chooses to install a "continuous ion exchange system" in accordance with Paragraph 1(3), above.

3. Pretty Prairie shall continue to implement the bottled water and public notification program described in the September 27, 1993 letter from its attorney, Wyatt A. Hoch, attached hereto as Attachment 1, unless (1) it certifies to EPA that sampling during the months of November and December, 1994, and January, 1995, show that Pretty Prairie's water is consistently below the MCL for nitrates, or until (2) it certifies that the selected ion exchange treatment system is in operation and sampling confirms that Pretty Prairie's water is below the MCL for nitrates.

4. Any notification required by this order shall be

City of Pretty Prairie
Docket No. VII-93-PWS-04

given to the undersigned counsel for EPA, whose address and fax number are shown.

FOR PRETTY PRAIRIE, KANSAS:

Roger L. McClure
Honorable Roger McClure
Mayor of Pretty Prairie, Kansas

Council for Pretty Prairie:

Wyatt A. Hoch
Wyatt A. Hoch, Esq.
Foulston & Siefkin

IT IS SO ORDERED. This Administrative Compliance Order on Consent shall become effective immediately.

Dennis Grams
Dennis Grams, P.E.
Regional Administrator

6/27/94
Date

Counsel for EPA:

William H. Ward
William H. Ward, Esq.
Assistant Regional Counsel
U.S. Environmental Protection Agency
726 Minnesota Avenue
Kansas City, Kansas 66101
FAX: (913) 551-7925

State of Kansas

Copy

Bill Graves



Governor

Department of Health and Environment

James J. O'Connell, Secretary

August 9, 1996

Ms. Elizabeth Murtagh-Yaw
US EPA - Region VII
726 Minnesota Ave.
Kansas City, KS 66101

Dear Elizabeth:

Please find enclosed a copy of the proposed consent order to the city of Pretty Prairie as discussed on the phone. This consent agreement commits the city to participating in the Kansas Wellhead Protection Program, and contains elements of the Kansas Nitrate Compliance Strategy recently forward to EPA. Since EPA has agreed to drop its administrative order to Pretty Prairie after this document is executed, we thought you advance review would be appropriate. If the agreement is acceptable, telephone notification would be appreciated so that we can forward it on to the city. If you have any questions, please call.

Sincerely yours,

A handwritten signature in cursive script, reading "David F. Waldo".

David F. Waldo, PE, Chief
Public Water Supply Section
Bureau of Water

DFW:lw

REC'D AUG 13 1995

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

IN THE MATTER OF:

CASE No. 96-E-

CITY OF PRETTY PRAIRIE, KANSAS
PUBLIC WATER SUPPLY ID #T4000

COMPLIANCE WITH K.A.R. 1995 SUPP. 28-15-13(b),
ADMINISTRATIVE ORDER CASE No. 91-E-71,
PROCEEDING UNDER K.S.A. 1995 SUPP. 65-163

CONSENT ORDER

I. PRELIMINARY STATEMENT

The Kansas Department of Health and Environment (KDHE) and the City of Pretty Prairie (City), having agreed that settlement of this matter is in the best interest of all parties and the public, hereby represent and state as follows:

II. STATUTORY AUTHORITY

1. KDHE is a duly authorized agency of the state of Kansas, created by an act of the legislature. KDHE has general jurisdiction over matters involving public water supply and protection of public health under the authority of K.S.A. 1995 Supp. 65-163 *et seq.* The following Findings of Fact and Conclusions of Law are made and Consent Order issued under the authority vested in the Secretary of the Kansas Department of Health and Environment (Secretary) by K.S.A. 1995 Supp. 65-163.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

2. The City operates a public water supply system as defined by K.S.A. 65-162a. A public water supply system is defined as "a system for the provision to the public of piped water for human consumption, if such system has at least ten (10) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. Such term includes any source, treatment, storage or distribution facilities under control of the operator of the system and used primarily in connection with the system, and any, source, treatment storage or distribution facilities not under such control but which are used in connection with such system."

3. K.S.A. 65-171m states in part, "The secretary of health and environment shall adopt rules and regulations for the implementation of this act. In addition to procedural rules and regulations, the

secretary may adopt rules and regulations providing for but not limited to: (a) primary drinking water standards applicable to all public water supply systems in the state. The primary drinking water standards may: (1) identify contaminants which may have an adverse effect on the health of persons; (2) specify for each contaminant either a maximum contaminant level that is acceptable in water for human consumption, ..."

4. K.S.A. 1995 Supp. 65-163 states in part: "(2) Whenever an investigation of any public water supply system is undertaken by the secretary, it shall be the duty of the supplier of water under investigation to furnish to the secretary information to determine the sanitary quality of the water supplied to the public and to determine compliance with applicable state laws and rules and regulations. The secretary may issue an order requiring changes in the source or sources of the public water supply system or in the manner of storage, purification or treatment utilized by the public water supply system before delivery to consumers, or distribution facilities, collectively or individually, as may in the secretary's judgment be necessary to safeguard the sanitary quality of the water and bring about compliance with applicable state law and rules and regulations. The supplier of water shall comply with the order of the secretary."

5. As authorized by K.S.A. 65-171m, the secretary adopted a maximum contaminant level (MCL) for nitrate of 10 mg/l, measured as N, at K.A.R. 28-15-13(b).

6. Administrative order, Case No. 89-E-10 was issued to the City by KDHE on February 13, 1989. This order contained a schedule of actions for the City to follow to return to compliance with the nitrate MCL. This order was not appealed and became a final order of the Secretary.

7. On October 28, 1990, Administrative Order No. 90-E-71 was issued to the City for failure to comply with Administrative Order No. 89-E-10. Administrative Order No. 89-E-10 was included by reference. Administrative Order No. 90-E-71 assessed penalties of \$12,675 for failure to comply with Administrative Order No. 89-E-10. This Order was timely appealed.

8. On October 24, 1991, the City and KDHE entered into Consent Order No. 91-E-71. Administrative Orders 89-E-10 and 91-E-71 were included by reference. Under the Consent Order, the City waived its appeal of Administrative Order No. 90-E-71 and agreed to pay \$675 in civil penalty. The remaining penalty was dismissed on the condition that the City comply with a schedule to comply with the nitrate MCL.

9. In partial response to the consent agreement, the City constructed well no. 5, which was placed into operation in November of 1994. At this time, wells no. 3 and 4 were removed from service, and the City relied entirely on well no. 5.

10. As indicated by the data summarized below, well no. 5 has marginally exceeded the nitrate MCL.

11. The City has expressed an interest in proceeding with a wellhead protection plan to protect the quality of water in the Pretty Prairie area, and to lower ambient groundwater nitrate levels.

12. K.S.A. 65-171r prohibits the following acts: "(c) the failure of a supplier of water under investigation to furnish information to the secretary under K.S.A. 65-163, and amendments thereto; (d) the failure of a supplier of water to comply with any final order of the secretary issued under the provisions of K.S.A. 65-163 or 65-163a, and amendments thereto; (e) the failure of a supplier of water to comply with a primary drinking water standard established under K.S.A. 65-171m, and amendments thereto unless a variance or exception has been granted;"

13. K.S.A. 65-171s states in part: "Any person who violates any provision of K.S.A. 65-171r shall incur, in addition to any other penalty provided by law, a civil penalty in an amount not more than \$5,000 for each violation."

IV. CONSENT ORDER

14. Therefore, based on the above and pursuant to K.S.A. 1995 Supp. 65-163, the Secretary hereby orders and the City hereby consents to comply with the following Schedule of Actions.

Schedule of Actions

15. The city shall test each point of entry to its distribution system for nitrate at least quarterly, using a KDHE-certified laboratory. The City shall increase the sampling frequency to either monthly or weekly if directed to do so by KDHE. Results shall be submitted to KDHE by the 10th day of April, July, October, and January, summarizing the results of all samples taken and analyzed in the previous quarter.

16. When the test results indicate the nitrate levels exceed the MCL of 10 mg/l, the City shall take the following actions:

a. Issue public notice on a quarterly basis as required by K.A.R. 1995 Supp. 28-15-15a. Copies of the notice shall be furnished to all local health care providers including medical doctors, clinics, hospitals, and the Reno County Health Department. Copies shall also be provided to day care centers and commercial establishments serving the traveling public, and posted in any roadside parks served by the City water system.

b. The City shall provide free of charge, an alternate source of drinking water for all infants less than six months of age, mothers nursing infants less than six months of age, and pregnant women. The drinking water provided must meet the requirements of K.A.R. 28-15-13. If bottled water is chosen to meet this requirement, the City shall obtain a certification from the bottled water supplier that the bottled water meets the appropriate requirements of the FDA concerning the source of the water and monitoring of water quality.

17. The City shall adopt and implement its wellhead protection program according to the following schedule. The wellhead protection program shall conform with the Kansas Wellhead Protection Program. A progress report shall be submitted to KDHE within 10 days of the dates outlined in the schedule.

a. The city shall complete delineation of the wellhead protection area no later than December 31, 1996.

b. The city shall complete an inventory of existing and potential pollution sources within the wellhead protection area no later than March 31, 1997.

c. The city shall complete development of management strategies for the existing and potential pollution sources identified above, with particular emphasis given to sources of nitrate contamination of the groundwater, no later than June 30, 1997.

d. The city shall submit its wellhead protection plan to KDHE for review by July 31, 1997.

e. The city shall adopt and implement its wellhead protection plan no later than September 30, 1997.

18. If nitrate levels exceed 15 mg/l in two of three consecutive quarters, the City will upon notice by KDHE, obtain the services of a professional engineer to prepare a formal feasibility study, including cost estimates, of obtaining a new source of water, blending existing sources of water to produce acceptable quality of water, purchasing water of acceptable quality from a neighboring public water supplier, providing treatment to reduce the nitrate concentration to an acceptable level, or any combination of these options. The City shall submit the engineering report to KDHE within twelve months of receiving notice from KDHE.

19. If nitrate levels exceed 20 mg/l in two of three consecutive quarters, this consent agreement will be revised to include a schedule requiring the City to implement the most feasible option identified in paragraph 18 above.

20. The City shall submit quarterly progress reports to KDHE indicating progress in implementing the wellhead protection program required in paragraph 17 above, or in completing the feasibility study required in paragraph 18 above, or in implementing the most feasible option as required in paragraph 19 above, as appropriate.

V. OTHER PROVISIONS

21. All actions required to be undertaken pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations. In any action by KDHE to enforce the terms of this Consent Order, the City agrees not to contest the authority or jurisdiction of the Secretary of Health and Environment to issue this Consent Order.

22. This Consent Order shall apply to and be binding upon KDHE and the City, its agents, successors, and assigns. No change in the ownership or corporate status of the City shall alter its responsibilities under this Consent Order.

23. The City shall provide a copy of this Consent Order to any subsequent owners or successors before ownership rights are transferred. The City shall provide a copy of this Consent Order to all contractors, sub-contractors, and consultants which are retained to conduct any work performed under this Consent Order, within 14 days after the effective date of this Consent Order or the date of retaining their services. Notwithstanding the terms of any contract, the City is responsible for compliance with this Consent Order and for insuring that its contractors and agents comply with this Consent Order.

24. The activities conducted under this Consent Order are subject to approval by KDHE, and the City shall provide all appropriate necessary information consistent with this Consent Order requested by KDHE.

25. The City agrees to meet every term and condition of this Consent Order. Failure to meet the terms and requirements of the Schedule For Improvements or any term or condition of, or scheduled date of performance in this Order or any report, work plan or other writing prepared pursuant to and incorporated into this Order, shall constitute a violation of this Consent Order and may subject the City to further enforcement action including but not limited to the assessment of civil penalties not to exceed \$5,000 per day for each day in which such violation occurs or failure to comply continues.

26. The provisions of this Consent Order shall terminate upon the receipt by the City, of written notice from KDHE that the City has demonstrated that the terms of this Consent Order, including any additional tasks which KDHE has determined to be necessary, has been satisfactorily completed. Failure to complete the Schedule For Improvements by the specified dates will subject the City to further enforcement action.

27. (a) The City shall perform the requirements under this Consent Order within the time limits set forth herein unless, the performance is prevented or delayed solely by events which constitute a force majeure. For purposes of this Consent Order a force majeure is defined as any event beyond the control of the City which could not be overcome by due diligence and which delays or prevents performance by a date required by this Consent Order. Such events do not include increased costs of performance or changed economic circumstances. Any delay caused in whole or in part by action or inaction by federal or state authorities shall be considered a force majeure and shall not be deemed a violation of any obligations required by this Consent Order.

(b) The City shall have the burden of proving all claims of force majeure. Failure to comply by reason of force majeure shall not be construed as a violation of this Consent Order.

(c) The City shall notify KDHE in writing within seven days after becoming aware of an event which the City knew, or should have known, constituted force majeure. Such notice shall estimate the anticipated length of delay, its cause, measures to be taken to minimize the delay, and an estimated timetable for implementation of these measures. Failure to comply with the notice provision of this section shall constitute a waiver of the City's right to assert a force majeure claim and shall be grounds for KDHE to deny the City an extension of time for performance.

(d) Within seven days of the receipt of written notice from the City of a force majeure event, KDHE shall notify the City of the extent to which modifications to this Consent Order are necessary. In the event KDHE and the City cannot agree that a force majeure event has occurred, or if there is no agreement on the length of the extension, the dispute shall be resolved by the Director of Environment under the Dispute Resolution Procedure provided herein.

(e) Any modifications to any provision of this Consent Order shall not alter the Schedule For Improvement or completion of other tasks required by this Consent Order unless specifically agreed to by the parties in writing and incorporated into this Consent Order.

28. This Consent Order may be amended by mutual agreement of KDHE and the City. Such amendments shall be in writing, shall have as their effective date the date on which they are signed by both parties and shall be incorporated into this Consent Order.

29. Dispute Resolution Procedure

(a) The parties recognize that a dispute may arise between them regarding implementation of the action to be taken as herein set forth or other terms or provisions of this Consent Order. If such dispute arises, the parties will endeavor to settle it by informal negotiations between themselves. If the parties cannot resolve the issue informally within a reasonable period of time, either of the parties may notify the other in writing stating specifically that informal negotiations have failed, that formal dispute resolution under this paragraph has commenced and stating its position with regard to the dispute and the reason therefore. A party receiving such a notice of dispute will respond in writing within ten (10) working days stating its position. The parties shall have an additional ten (10) working day period to prepare written arguments and evidence for submission to the other party. Any settlement shall be reduced to writing, signed by representatives of each party and incorporated into the Consent Order. If the parties are unable to reach an agreement following this procedure, the matter shall be referred to the Director of the Division of Environment, KDHE, who shall decide the matter and provide a written statement of his decision which shall be incorporated into the Consent Order.

(b) This dispute resolution procedure shall not preclude any party from having direct recourse to court if otherwise available by applicable law.

30. The requirements of this Consent Order represent the best professional judgement of KDHE at this time based on the available information. If circumstances change significantly so that data indicates an immediate threat of danger to the public health or safety or the environment or a significantly different threat other than the alleged deficiencies addressed herein, then KDHE reserves the right to modify dates or requirements herein as it deems reasonably necessary and the City reserves the right to appeal any such modifications or additional requirements.

31. Nothing contained in this Consent Order shall affect any right, claim, interest, defense, or cause of action of any party hereto with respect to any person or entity not a party to this Order. This Order does not constitute a waiver, suspension, or modification of the requirements of applicable statutes or regulations which remain in full force and effect.

32. The parties hereto have affixed their signatures on the dates inserted below to acknowledge their agreement to this Consent Order. The signatories to this Consent Order certify that they are authorized to execute and legally bind the parties they represent to this Consent Order.

33. KDHE reserves the right to cancel or modify this agreement if new information concerning the health effects of nitrate is discovered.

34. Upon execution of this Consent Agreement, Case no. 91-E-71 is dismissed.

IT IS SO AGREED.

James J. O'Connell, Secretary
K a n s a s D e p a r t m e n t o f H e a l t h
City of Pretty Prairie
and Environment

Dated: _____

Dated: _____

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

IN THE MATTER OF:

CASE No. 96-E-0263

CITY OF PRETTY PRAIRIE, KANSAS
PUBLIC WATER SUPPLY ID #T4000

COMPLIANCE WITH K.A.R 1995 SUPP. 28-15-13(b),
ADMINISTRATIVE ORDER CASE No. 91-E-71,
PROCEEDING UNDER K.S.A. 1995 SUPP. 65-163

CONSENT ORDER

I. PRELIMINARY STATEMENT

The Kansas Department of Health and Environment (KDHE) and the City of Pretty Prairie (City), having agreed that settlement of this matter is in the best interest of all parties and the public, hereby represent and state as follows:

II. STATUTORY AUTHORITY

1. KDHE is a duly authorized agency of the state of Kansas, created by an act of the legislature. KDHE has general jurisdiction over matters involving public water supply and protection of public health under the authority of K.S.A. 1995 Supp. 65-163 *et seq.* The following Findings of Fact and Conclusions of Law are made and Consent Order issued under the authority vested in the Secretary of the Kansas Department of Health and Environment (Secretary) by K.S.A. 1995 Supp. 65-163.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

2. The City operates a public water supply system as defined by K.S.A. 65-162a. A public water supply system is defined as "a system for the provision to the public of piped water for human consumption, if such system has at least ten (10) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. Such term includes any source, treatment, storage or distribution facilities under control of the operator of the system and used primarily in connection with the system, and any, source, treatment storage or distribution facilities not under such control but which are used in connection with such system."

3. K.S.A. 65-171m states in part, "The secretary of health and environment shall adopt rules and regulations for the implementation of this act. In addition to procedural rules and regulations, the

secretary may adopt rules and regulations providing for but not limited to: (a) primary drinking water standards applicable to all public water supply systems in the state. The primary drinking water standards may: (1) identify contaminants which may have an adverse effect on the health of persons; (2) specify for each contaminant either a maximum contaminant level that is acceptable in water for human consumption, ..."

4. K.S.A. 1995 Supp. 65-163 states in part: "(2) Whenever an investigation of any public water supply system is undertaken by the secretary, it shall be the duty of the supplier of water under investigation to furnish to the secretary information to determine the sanitary quality of the water supplied to the public and to determine compliance with applicable state laws and rules and regulations. The secretary may issue an order requiring changes in the source or sources of the public water supply system or in the manner of storage, purification or treatment utilized by the public water supply system before delivery to consumers, or distribution facilities, collectively or individually, as may in the secretary's judgment be necessary to safeguard the sanitary quality of the water and bring about compliance with applicable state law and rules and regulations. The supplier of water shall comply with the order of the secretary."

5. As authorized by K.S.A. 65-171m, the secretary adopted a maximum contaminant level (MCL) for nitrate of 10 mg/l, measured as N, at K.A.R. 1995 Supp. 28-15-13(b).

6. Administrative order, Case No. 89-E-10 was issued to the City by KDHE on February 13, 1989. This order contained a schedule of actions for the City to follow to return to compliance with the nitrate MCL. This order was not appealed and became a final order of the Secretary.

7. On October 28, 1990, Administrative Order No. 90-E-71 was issued to the City for failure to comply with Administrative Order No. 89-E-10. Administrative Order No. 89-E-10 was included by reference. Administrative Order No. 90-E-71 assessed penalties of \$12,675 for failure to comply with Administrative Order No. 89-E-10. This Order was timely appealed.

8. On October 24, 1991, the City and KDHE entered into Consent Order No. 91-E-71. Administrative Orders 89-E-10 and 91-E-71 were included by reference. Under the Consent Order, the City waived its appeal of Administrative Order No. 90-E-71 and agreed to pay \$675 in civil penalty. The remaining penalty was dismissed on the condition that the City comply with a schedule to comply with the nitrate MCL.

9. In partial response to the consent agreement, the City constructed Well No. 5, which was placed into operation in November of 1994. At this time, Wells No. 3 and 4 were removed from service, and the City relied entirely on Well No. 5.

10. The nitrate levels in Well No. 5 have been as high as 11.31 mg/l in samples analyzed in the KDHE laboratory.

11. The City has expressed an interest in proceeding with a wellhead protection plan to protect the quality of water in the Pretty Prairie area, and to lower ambient groundwater nitrate levels.

12. K.S.A. 65-171r prohibits the following acts: "(c) the failure of a supplier of water under investigation to furnish information to the secretary under K.S.A. 65-163, and amendments thereto; (d) the failure of a supplier of water to comply with any final order of the secretary issued under the provisions of K.S.A. 65-163 or 65-163a, and amendments thereto; (e) the failure of a supplier of water to comply with a primary drinking water standard established under K.S.A. 65-171m, and amendments thereto unless a variance or exception has been granted;"

13. K.S.A. 65-171s states in part: "Any person who violates any provision of K.S.A. 65-171r shall incur, in addition to any other penalty provided by law, a civil penalty in an amount not more than \$5,000 for each violation."

IV. CONSENT ORDER

14. Therefore, based on the above and pursuant to K.S.A. 1995 Supp. 65-163, the Secretary hereby orders and the City hereby consents to comply with the following Schedule of Actions.

Schedule of Actions

15. The city shall test each point of entry to its distribution system for nitrate at least quarterly, using the KDHE laboratory, or a KDHE-certified laboratory. The City shall increase the sampling frequency to either monthly or weekly if directed to do so by KDHE. Results shall be submitted to KDHE by the 10th day of January, April, July, and October summarizing the results of all samples taken and analyzed in the previous quarter.

16. When the test results indicate the nitrate levels exceed the MCL of 10 mg/l, the City shall take the following actions:

a. Issue public notice on a quarterly basis as required by K.A.R. 1995 Supp. 28-15-15a. Copies of the notice shall be furnished to all area health care providers including medical doctors, clinics, hospitals, and the Reno County Health Department. Copies shall also be provided to day care centers and commercial establishments serving the traveling public, and posted in any roadside parks served by the City water system.

b. The City shall provide free of charge, an alternate source of drinking water for all infants less than six months of age, mothers nursing infants less than six months of age, and pregnant women. The drinking water provided must meet the requirements of K.A.R. 28-15-13. If bottled water is chosen to meet this requirement, the City shall obtain a certification from the bottled water supplier that the bottled water meets the appropriate requirements of the FDA concerning the source of the water and monitoring of water quality.

17. The City shall adopt and implement its wellhead protection program according to the following schedule. The wellhead protection program shall conform with the Kansas Wellhead Protection Program. A progress report shall be submitted to KDHE within 10 days of the dates outlined in the schedule.

a. The city shall complete delineation of the wellhead protection area no later than March 31, 1997.

b. The city shall complete an inventory of existing and potential pollution sources within the wellhead protection area no later than June 30, 1997.

c. The city shall complete development of management strategies for the existing and potential pollution sources identified above, with particular emphasis given to sources of nitrate contamination of the groundwater, no later than September 30, 1997.

d. The city shall submit its wellhead protection plan to KDHE for review by October 31, 1997.

e. The city shall adopt and implement its wellhead protection plan no later than December 31, 1997.

18. If nitrate levels exceed 15 mg/l in two of three consecutive quarters, upon notice by KDHE, the City will obtain or prepare a formal feasibility study, including cost estimates, of obtaining a new source of water, blending existing sources of water to produce acceptable quality of water, purchasing water of acceptable quality from a neighboring public water supplier, providing treatment to reduce the nitrate concentration to an acceptable level, or any combination of these options. The City shall submit the feasibility study to KDHE within twelve months of receiving notice from KDHE.

19. If nitrate levels exceed 20 mg/l in two of three consecutive quarters, this consent agreement will be revised to include a schedule requiring the City to implement an option identified in paragraph 18 above.

20. The City shall submit quarterly reports to KDHE discussing its progress in each of the following areas as appropriate: implementing the wellhead protection program required in paragraph 17 above; completing the feasibility study required in paragraph 18 above, or implementing the option selected according to paragraph 19 above.

V. OTHER PROVISIONS

21. All actions required to be undertaken pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations. In any action by KDHE to enforce the terms of this Consent Order, the City agrees not to contest the authority or jurisdiction of the Secretary of Health and Environment to issue this Consent Order.

22. This Consent Order shall apply to and be binding upon KDHE and the City, its agents, successors, and assigns. No change in the ownership or corporate status of the City shall alter its responsibilities under this Consent Order.

23. The City shall provide a copy of this Consent Order to any subsequent owners or successors before ownership rights are transferred. The City shall provide a copy of this Consent Order to all contractors, sub-contractors, and consultants which are retained to conduct any work performed under this Consent Order, within 14 days after the effective date of this Consent Order or the date of retaining their services. Notwithstanding the terms of any contract, the City is responsible for compliance with this Consent Order and for insuring that its contractors and agents comply with this Consent Order.

24. The activities conducted under this Consent Order are subject to approval by KDHE, and the City shall provide all appropriate necessary information consistent with this Consent Order requested by KDHE.

25. The City agrees to meet every term and condition of this Consent Order. Failure to meet the terms and requirements of the Schedule of Actions for improvements, or any term or condition of, or scheduled date of performance in this Order, or any report, work plan or other writing prepared pursuant to and incorporated into this Order, shall constitute a violation of this Consent Order and may subject the City to further enforcement action including but not limited to the assessment of civil penalties not to exceed \$5,000 per day for each day in which such violation occurs or failure to comply continues.

26. The provisions of this Consent Order shall terminate upon the receipt by the City, of written notice from KDHE that the City has demonstrated that the terms of this Consent Order, including any additional tasks which KDHE has determined to be necessary, has been satisfactorily completed. Failure to complete the Schedule of Actions for improvements by the specified dates will subject the City to further enforcement action.

27. (a) The City shall perform the requirements under this Consent Order within the time limits set forth herein unless, the performance is prevented or delayed solely by events which constitute a force majeure. For purposes of this Consent Order a force majeure is defined as any event beyond the control of the City which could not be overcome by due diligence and which delays or prevents performance by a date required by this Consent Order. Such events do not include increased costs of performance or changed economic circumstances. Any delay caused in whole or in part by action or inaction by federal or state authorities shall be considered a force majeure and shall not be deemed a violation of any obligations required by this Consent Order.

(b) The City shall have the burden of proving all claims of force majeure. Failure to comply by reason of force majeure shall not be construed as a violation of this Consent Order.

(c) The City shall notify KDHE in writing within seven days after becoming aware of an event which the City knew, or should have known, constituted force majeure. Such notice shall estimate the anticipated length of delay, its cause, measures to be taken to minimize the delay, and an estimated timetable for implementation of these measures. Failure to comply with the notice provision of this section shall constitute a waiver of the City's right to assert a force majeure claim and shall be grounds for KDHE to deny the City an extension of time for performance.

(d) Within seven days of the receipt of written notice from the City of a force majeure event, KDHE shall notify the City of the extent to which modifications to this Consent Order are necessary. In the event KDHE and the City cannot agree that a force majeure event has occurred, or if there is no agreement on the length of the extension, the dispute shall be resolved by the Director of Environment under the Dispute Resolution Procedure provided herein.

(e) Any modifications to any provision of this Consent Order shall not alter the Schedule For Improvement or completion of other tasks required by this Consent Order unless specifically agreed to by the parties in writing and incorporated into this Consent Order.

28. This Consent Order may be amended by mutual agreement of KDHE and the City. Such amendments shall be in writing, shall have as their effective date the date on which they are signed by both parties and shall be incorporated into this Consent Order.

29. Dispute Resolution Procedure

(a) The parties recognize that a dispute may arise between them regarding implementation of the action to be taken as herein set forth or other terms or provisions of this Consent Order. If such dispute arises, the parties will endeavor to settle it by informal negotiations between themselves. If the parties cannot resolve the issue informally within a reasonable period of time, either of the parties may notify the other in writing stating specifically that informal negotiations have failed, that formal dispute resolution under this paragraph has commenced and stating its position with regard to the dispute and the reason therefore. A party receiving such a notice of dispute will respond in writing within ten (10) working days stating its position. The parties shall have an additional ten (10) working day period to prepare written arguments and evidence for submission to the other party. Any settlement shall be reduced to writing, signed by representatives of each party and incorporated into the Consent Order. If the parties are unable to reach an agreement following this procedure, the matter shall be referred to the Director of the Division of Environment, KDHE, who shall decide the matter and provide a written statement of his decision which shall be incorporated into the Consent Order.

(b) This dispute resolution procedure shall not preclude any party from having direct recourse to court if otherwise available by applicable law.

30. The requirements of this Consent Order represent the best professional judgement of KDHE at this time based on the available information. If circumstances change significantly so that data indicates an immediate threat of danger to the public health or safety or the environment or a significantly different threat other than the alleged deficiencies addressed herein, then KDHE reserves the right to modify dates or requirements herein as it deems reasonably necessary and the City reserves the right to appeal any such modifications or additional requirements.

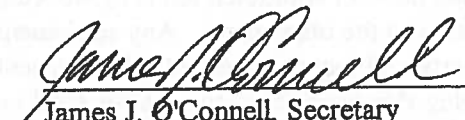
31. Nothing contained in this Consent Order shall affect any right, claim, interest, defense, or cause of action of any party hereto with respect to any person or entity not a party to this Order. This Order does not constitute a waiver, suspension, or modification of the requirements of applicable statutes or regulations which remain in full force and effect.

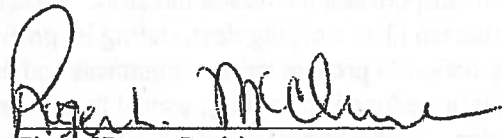
32. The parties hereto have affixed their signatures on the dates inserted below to acknowledge their agreement to this Consent Order. The signatories to this Consent Order certify that they are authorized to execute and legally bind the parties they represent to this Consent Order.

33. KDHE reserves the right to cancel or modify this agreement if new information concerning the health effects of nitrate is discovered.

34. Upon execution of this Consent Agreement, Case No. 91-E-71 is dismissed.

IT IS SO AGREED.


James J. O'Connell, Secretary
Kansas Department of Health
and Environment


City of Pretty Prairie

Dated: 15 Oct 96

Dated: 10-01-96



Kathleen Sebelius, Governor
Roderick L. Bremby, Secretary

DEPARTMENT OF HEALTH
AND ENVIRONMENT

www.kdheks.gov

Division of Environment

DIRECTIVE

July 20, 2007

Curt Miller, Mayor
City of Pretty Prairie
119 West Main
PO Box 68
Pretty Prairie, Kansas 67570

Re: Public Water Supply: Nitrate MCL Non-Compliance
Federal ID No.: KS2015501
State ID No.: T4000

Dear Mayor Miller and City Council Members:

Drinking water delivered by the city of Pretty Prairie from Well 05/Treatment Plant 001 (Site ID #00123378) to its customers continues to exceed the maximum contaminant level (MCL) of 10 mg/L established for nitrate. The exceedance of the nitrate MCL has resulted in continuous violation of K.A.R. 28-15a-62. A summary of monitoring results is attached to this Directive.

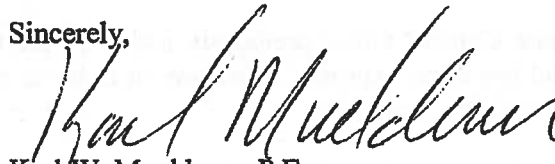
A Nitrate Consent Order previously issued to the City on August 20, 1996 did not result in compliance and has since expired. Therefore, in order to address the continued violations, the city of Pretty Prairie is hereby directed to:

1. Sample the water for nitrate at least once every three months (quarterly). The sampling frequency shall be increased to either monthly or weekly if instructed to do so in writing by KDHE. The City may use the KDHE laboratory or a KDHE-certified private laboratory for analysis. If a private laboratory is used, nitrate results shall be submitted to KDHE - Bureau of Water by the 10th day of January, April, July and October for the previous quarter.
2. When test results indicate the nitrate levels exceed the MCL of 10 mg/L at the point of entry, the city of Pretty Prairie shall take the following actions:
 - a. Issue public notice to all customers served as soon as possible within 24 hours in accordance with K.A.R. 28-15a-202. Copies of the notice shall be furnished to the county health department. A copy of the notice is also required to be submitted to the KDHE within 10 days of delivering such notice to your customers.

- b. Provide, free of charge, an alternate source of drinking water for all infants less than six months of age, mothers who are nursing infants less than six months of age, and pregnant women. The drinking water provided must meet the requirements of K.A.R. 28-15a-23. If bottled water is chosen to meet this requirement, the city of Pretty Prairie shall obtain a certification from the bottled water supplier that the bottled water meets the appropriate requirements of the U.S. Food and Drug Administration (FDA).
3. The city of Pretty Prairie shall obtain the services of a Kansas-licensed professional engineer to prepare a formal feasibility study, including cost estimates to comply with the nitrate MCL. The city of Pretty Prairie shall submit the Feasibility Study to the KDHE by **December 20, 2007**. The city of Pretty Prairie and the KDHE will jointly review the results of the feasibility study and determine a course of action. At a minimum, the feasibility study shall address the following options:
 - a. Obtaining a new source of raw water,
 - b. Obtaining water of acceptable quality from another public water supply,
 - c. Treatment options to reduce nitrate, including the feasibility of blending existing sources of water to produce acceptable quality water, and
 - d. If a new source can be obtained, minimizing the use of, or removing from service, the individual water well causing the problem.

Please submit the above mentioned items to the KDHE; Public Water Supply Section at 1000 SW Jackson, Suite 420; Topeka, KS 66612 as indicated. If you have any questions or need any assistance regarding this matter, please contact Kelly Kelsey at (785) 296-6297.

Sincerely,



Karl W. Mueldener, P.E.
Director, Bureau of Water

Attachment

KWM:kdk

pc: Reno County Health Department
KDHE-SCDO
DRP/PJC/DCS/1.0 File

ATTACHMENT

Nitrate results in red bold type are in violation of the MCL.

SUMMARY OF NITRATE RESULTS

1995 – Present

FEDERAL ID	SYSTEM NAME	COLLECT DATE	ANALYTE	RESULT	UNIT
KS2015501	PRETTY PRAIRIE, CITY OF	June 19, 2007	NITRATE	13	MG/L
KS2015501	PRETTY PRAIRIE, CITY OF	March 13, 2007	NITRATE	14	MG/L
KS2015501	PRETTY PRAIRIE, CITY OF	May 1, 2006	NITRATE	13	MG/L
KS2015501	PRETTY PRAIRIE, CITY OF	March 20, 2006	NITRATE	12	MG/L
KS2015501	PRETTY PRAIRIE, CITY OF	January 10, 2006	NITRATE	12	MG/L
KS2015501	PRETTY PRAIRIE, CITY OF	October 12, 2005	NITRATE	7	MG/L
KS2015501	PRETTY PRAIRIE, CITY OF	August 1, 2005	NITRATE	10	MG/L
KS2015501	PRETTY PRAIRIE, CITY OF	May 31, 2005	NITRATE	12	MG/L
KS2015501	PRETTY PRAIRIE, CITY OF	February 14, 2005	NITRATE	12	MG/L
KS2015501	PRETTY PRAIRIE, CITY OF	December 6, 2004	NITRATE	11	MG/L
KS2015501	PRETTY PRAIRIE, CITY OF	August 23, 2004	NITRATE	12	MG/L
KS2015501	PRETTY PRAIRIE, CITY OF	June 12, 2004	NITRATE	12	MG/L
KS2015501	PRETTY PRAIRIE, CITY OF	February 23, 2004	NITRATE	10	MG/L
KS2015501	PRETTY PRAIRIE, CITY OF	April 7, 2003	NITRATE	12	MG/L
KS2015501	PRETTY PRAIRIE, CITY OF	September 25, 2000	NITRATE	12	MG/L
KS2015501	PRETTY PRAIRIE, CITY OF	August 24, 2000	NITRATE	12	MG/L
KS2015501	PRETTY PRAIRIE, CITY OF	January 31, 1997	NITRATE	11	MG/L
KS2015501	PRETTY PRAIRIE, CITY OF	May 16, 1996	NITRATE	16	MG/L
KS2015501	PRETTY PRAIRIE, CITY OF	May 16, 1996	NITRATE	11	MG/L
KS2015501	PRETTY PRAIRIE, CITY OF	March 26, 1996	NITRATE	11	MG/L
KS2015501	PRETTY PRAIRIE, CITY OF	March 26, 1996	NITRATE	13	MG/L
KS2015501	PRETTY PRAIRIE, CITY OF	October 25, 1995	NITRATE	10	MG/L
KS2015501	PRETTY PRAIRIE, CITY OF	September 27, 1995	NITRATE	14	MG/L
KS2015501	PRETTY PRAIRIE, CITY OF	September 26, 1995	NITRATE	11	MG/L
KS2015501	PRETTY PRAIRIE, CITY OF	July 28, 1995	NITRATE	10	MG/L
KS2015501	PRETTY PRAIRIE, CITY OF	June 28, 1995	NITRATE	16	MG/L
KS2015501	PRETTY PRAIRIE, CITY OF	June 28, 1995	NITRATE	11	MG/L
KS2015501	PRETTY PRAIRIE, CITY OF	April 19, 1995	NITRATE	13	MG/L
KS2015501	PRETTY PRAIRIE, CITY OF	April 19, 1995	NITRATE	10	MG/L
KS2015501	PRETTY PRAIRIE, CITY OF	March 30, 1995	NITRATE	11	MG/L
KS2015501	PRETTY PRAIRIE, CITY OF	March 30, 1995	NITRATE	15	MG/L
KS2015501	PRETTY PRAIRIE, CITY OF	March 30, 1995	NITRATE	16	MG/L



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

FEB 04 2008

Honorable Curt Miller
Mayor of City of Pretty Prairie
119 West Main Street
Pretty Prairie, KS 67570

Dear Mayor Miller:

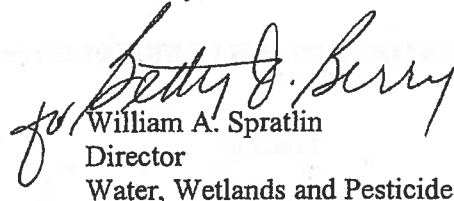
Re: Use of Bottled Water Under the Safe Drinking Water Act (SDWA)

It has been brought to the attention of the U.S. Environmental Protection Agency (EPA), Region VII, through the Kansas Department of Health and the Environment (KDHE) that Pretty Prairie is seeking clarification of the use of bottled water to achieve compliance with provisions of the SDWA. Under the SDWA, bottled water is allowed for use in very limited situations, such as in emergency situations or as a temporary measure under variances and exemptions. However, bottled water is prohibited for use by a public water system to achieve compliance with the Maximum Contaminant Level (MCL); 40 CFR § 141.101 reads "Public water systems shall not use bottled water to achieve compliance with an MCL. Bottled water may be used on a temporary basis to avoid unreasonable risk to health."

The city's of Pretty Prairie drinking water system has a long history of exceeding the MCL for nitrates under the SDWA and must come into compliance with the MCL as soon as possible. Because bottled water cannot be used to achieve compliance with MCL, EPA strongly encourages the city of Pretty Prairie to work with KDHE and take additional measures to come into compliance.

If you have any questions, please contact Mary Tietjen-Mindrup, Chief, Drinking Water Management Branch, at (913) 551-7431.

Sincerely,


William A. Spratlin
Director
Water, Wetlands and Pesticides Division

cc: Dave Waldo
KDHE

Honorable Curt Miller
Mayor of City of Pretty Prairie
119 West Main Street
Pretty Prairie, KS 67570

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Director
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KDHE

WWPD/DRWM:Wurtz:MCx7490:01-30-08:H:DRNK/2008 Correspondence/Wurtz/Pretty Prairie.doc

Wurtz

Monica Wurtz

01/30/08

Mindrup

M. Mindrup

01/20/08

W. A. Spratlin

02/04/08

DRWM Rec'd APR 21 2008



CITY OF PRETTY PRAIRIE

P.O. Box 68 • 119 West Main • Pretty Prairie, Kansas 67570-0068

620-459-6392 • FAX 620-459-7354

E-Mail: pprairie@btsskynet.net • www.skyways.org/towns/PrettyPrairie

"HOME OF KANSAS' LARGEST NIGHT RODEO"

April 16, 2008

Ms. Monica Wurtz and Mary Tietjen-Mindrup
Drinking Water Management Branch
Environmental Protection Agency
901 N. 5th
Kansas City, Kansas 66101

Dear Monica and Mary:

The City of Pretty Prairie and our City Council members would like to meet with you to visit about our City's nitrate situation and achieving compliance with the Safe Drinking Water Act in this regard. We would like to have you visit our City, if possible, to discuss this matter. Our City has used the bottled water program in the past under a Consent Order, which has been a successful and economic remedy for our community.

Please let us know when one of you or both, might be able to arrange a meeting time with us here in Pretty Prairie to further discuss this situation. You may call our City Clerk, Patti Brace, and let her know if this might be possible to do.

The City appreciates your consideration in this matter and we do look forward to visiting with you.

Sincerely,

Curt Miller

Curt Miller
Mayor
City of Pretty Prairie

